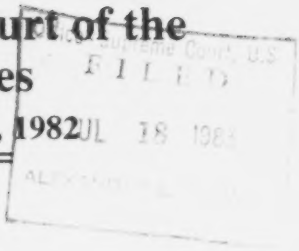
NO. 82-2086

In the Supreme Court of the United States

OCTOBER TERM, 1982



DIRECTOR OF THE CALIFORNIA
STATE DEPARTMENT OF SOCIAL SERVICES,

Petitioner,

v.

GEORGINA ZAPATA, ALFRED LONG,
BAY AREA WELFARE RIGHTS ORGANIZATION,
individually and on behalf of all others
similarly situated,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT
OF THE STATE OF CALIFORNIA

RESPONDENTS' BRIEF IN OPPOSITION

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QUESTION PRESENTED

Does California's policy of denying AFDC eligibility to families in which all dependent children are disabled SSI recipients, by declaring that such children are not "needy," violate Title IV-A of the Social Security Act of 1935, 42 United States Code Section 601 *et seq.*?

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Respondents Georgina Zapata, et al., respectfully request that the court deny the petition for writ of certiorari, seeking review of the California Supreme Court's affirmance of the Court of Appeal decision in this case. The Court of Appeal opinion is reported at 137 Cal. App. 3d 858 (1982). The California Supreme Court denied petitioner's petition for hearing on March 16, 1983.

STATUTES INVOLVED

In addition to the statutes cited by petitioner, 42 United States Code Section 602(a)(24) is germane to this case:

> [A State plan under Title IV shall]...
>
> (24) provide that if an individual is receiving benefits under subchapter XVI of this chapter, then, for the period for which such benefits are received, such individual shall not be regarded as a member of a family for purposes of determining the amount of the benefits of the family under this subchapter and his income and resources shall not be counted as income and resources of a family under this subchapter.

STATEMENT OF THE CASE

The statement of the case presented by petitioner is incomplete. The following additional facts are essential:

1. Under petitioner's policy, a disabled minor SSI recipient is considered "non-needy" and the child's caretaker relative ineligible to receive an AFDC grant, regardless of the amount of the SSI grant received by the child. At all times since the filing of this action, the amount of a monthly SSI grant for a disabled child has been less than California's minimum standard of need for a family of two under the AFDC program. Thus, two-person families which receive income from other sources in an amount equivalent to the SSI grant level for one child would be considered "needy" for purposes of AFDC eligibility.

2. On April 22, 1977, the United States Department of Health Education and Welfare (now, the Department of Health and Human Services) issued a program interpretation letter, Action Transmittal No. 77-45, advising all states that when a child receives SSI, and otherwise qualifies as a "dependent child" under 42 U.S.C. Section 606(a), the needy caretaker relative is eligible to receive AFDC benefits. Petitioner received said notice but has failed to conform its policies to HEW's interpretation. The federal government's interpretation, which is contrary to the position advanced by petitioner State officials, has not been rescinded. It remains the definitive statement of federal policy on the matter which is presented here.

SUMMARY OF REASONS WHY THE WRIT SHOULD BE DENIED

Petitioner has failed to satisfy the criteria set forth in Rule 17 as bases for the

granting of review on a writ of certiorari.

First, there has been no conflict among court decisions involving the issue raised in this case. Not only have the courts at all three levels of review in California been consistent in rejecting petitioner's policy and the arguments in support of that policy, but the two federal district courts which have addressed this issue (District of New Hampshire and Middle District of Florida) have held that the denial of AFDC eligibility to the caretaker relative of a dependent minor SSI recipient violates the Social Security Act. Petitioner has presented no arguments to this court which were not presented to the Superior Court, the Court of Appeal or the California Supreme Court. This issue has not arisen in other states because, to respondents' knowledge, all other states except California are properly following HHS's policy directive.

Second, there is no important question of federal law which has not been, but should be, settled by this court. Petitioner's statement that the proper allocation of resources in the AFDC program is an important question is not enough to satisfy this requirement. While the provision of benefits to the needy persons involved is vital, the legal question is one of strict statutory analysis, is of no relevance beyond the immediate situation at issue, and is not contested by the other 49 states or the federal agency which administers the AFDC program.

Third, the state courts herein have not decided a federal question in a way in conflict with applicable decisions of this court. Petitioner claims that the opinion of the Court of Appeal, review of which was denied by the California Supreme Court, is in "direct conflict" with a series of decisions by this court which recognize that the state and federal

governments must cooperatively administer the AFDC program and that "each is free to set its own standard of need and to determine the level of benefits by the amount of funds it devotes to the program," quoting King v. Smith, 392 U.S. 309 (1968). Respondent agrees that the states have the authority to set standards of need, expressed in monetary amounts. However, as this court held in King v. Smith, the states do not have the authority to institute eligibility requirements which are inconsistent with the Social Security Act. This is the essence of the Court of Appeal holding herein, which, petitioner's comments notwithstanding, is absolutely consistent with the holding in King v. Smith and other cases of this court interpreting the Social Security Act.

ARGUMENT

I. AFDC AND SSI ARE BOTH PROGRAMS TO AID NEEDY INDIVIDUALS

Central to the issues in this case is an understanding of the AFDC program and its interplay with Supplemental Security Income (SSI). Both are cash benefit programs based on need and established to provide assistance to poor people. AFDC is a cooperative, federal-state welfare program established in Title IV-A of the Social Security Act (42 U.S.C. § 601, et seq.), to provide assistance to needy families with dependent children. SSI is a cooperative federal-state welfare program established in Title XVI of the Social Security Act (42 U.S.C. § 1381 et seq.) to provide assistance to needy aged, blind and disabled individuals.

To be eligible for AFDC under federal law, a family must have at least one dependent child in the care of a relative and have income and

resources below a state established standard of need. 42 U.S.C.§ 606(a); Welfare & Institutions Code § 11203. Once found to be eligible, a family will receive benefits dependent upon the number of eligible persons in the home and the amount of income attributable to those persons. Welfare and Institutions Code § 11450.

To be eligible for SSI, an individual must be over 65 years of age, blind or disabled and have income and resources below an established standard of need. 42 U.S.C. § 1382. States are then granted an option, which California has exercised, to supplement that SSI payment. Welfare and Institutions Code § 12000, et seq. As with AFDC, the amount of SSI paid to a recipient is dependent on that individual's need and other income.

An individual may be eligible for AFDC and SSI benefits, but federal law prohibits that individual from receiving assistance under both

programs. Pursuant to 42 U.S.C. § 602(a)(24), an individual who receives SSI is not regarded as a member of a family eligible for AFDC for purposes of determining the amounts of AFDC benefits to which the family is entitled. Thus, the AFDC benefits are calculated for such a family as if the SSI recipient were not living in the household.

This case involves a dispute as to the significance of 42 U.S.C. § 602(a)(24) when all of the dependent children in the household receive SSI. Petitioner state official contends that such dependent children are "not needy" and that therefore the caretaker relatives [1/] are ineligible for benefits.

[1/] The term "caretaker relative" is a shorthand expression for the "relative with whom any dependent child is living," a term of art referred to in 42 U.S.C. § 606(b) and defined in 42 U.S.C. § 606(c).

Respondents contend, and the courts below found, that petitioner is prohibited by federal law from determining that SSI recipient children are per se non-needy, and that therefore their caretaker relatives are ineligible for AFDC. The denial of benefits to such families means that needy parents or other relatives caring for poor disabled children are denied assistance for their own needs, and the children who have been targeted by Congress for special benefits due to their disabilities are denied the full benefits of their SSI grant. The caretaker relative is forced either to forego the child's SSI benefits entirely or to utilize the child's SSI grant to meet his/her needs as well as the needs of the child. Appellants' policy is contrary both to the letter of the Social Security Act, and to its spirit, which is to "...enhance, not diminish benefits." West v. Cole, 390 F.Supp. 91 (N.D. Miss., 1975).

II. THE SOCIAL SECURITY ACT REQUIRES THAT AFDC BE PROVIDED TO NEEDY CARETAKER RELATIVES CARING FOR DEPENDENT CHILDREN, EVEN IF THOSE CHILDREN ARE RECEIVING SSI.

A. The provision for the needs of the caretaker relative is central to the AFDC program.

42 U.S.C. § 602(a)(10) requires that each state's AFDC plan provide that "aid to families with dependent children shall be provided with reasonable promptness to all eligible individuals." (Emphasis added.) This requirement has been authoritatively construed by the United States Supreme Court to require a state to include as "eligible individuals" all persons who meet the federal criteria for eligibility set forth at 42 U.S.C. §§ 606-608, absent explicit Congressional authorization for the exclusion from the program of any group of individuals. See, e.g., Burns v. Alcala, 420 U.S. 575, 580 (1975); Carleson v.

Remillard, 406 U.S. 598, 600, (1972); Townsend v. Swank, 404 U.S. 282, 286 (1971); King v. Smith, supra.

Needy caretaker relatives are eligible for AFDC to meet their own needs so long as they have in their care a "dependent child" as defined by 42 U.S.C. § 606(a). Thus, in defining the term "aid to families with dependent children," Congress deliberately made sure to include within that term:

> "money payments ... to meet the needs of the relative with whom any dependent child is living ..." 42 U.S.C. § 606(b).

This provision was added to the Social Security Act in 1950 in specific recognition that if the needs of the mother or other caretaker were left unsatisfied, the caretaker would be forced to divert to herself the meager payments intended for the child. See, e.g. Rodriguez v. Vowell, 472 F.2d 622, 624-25 (5th Cir. 1973), cert. denied, 412 U.S. 944 (1973).

See, also, Dandridge v. Williams, 397 U.S. 471, 479 (1970). Accordingly, in construing 42 U.S.C. §606(b), the courts have held that various state restrictions on the eligibility of caretaker relatives are inconsistent with the requirement of 42 U.S.C. §602(a)(10) that "all eligible individuals" be provided AFDC. See Waits v. Swoap, 11 Cal. 3d 887 (1974), cert. denied, 419 U.S. 1022 (1974); Rodriguez v. Vowell, supra. The failure to make AFDC payments to plaintiffs to meet their own needs causes the precise injury Congress sought to avoid by enacting 42 U.S.C. §606(b).

B. Respondents' children are "needy".

Respondents and the class they represent are eligible for AFDC because they are caring

for "dependent children." [2/] Petitioner does not dispute that the children in the respondent class meet the definition of "dependent children."

It is equally clear that respondents' children are children in need of financial assistance, as they are recipients of SSI, a need based program. Congress specifically

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[2/] 42 U.S.C. § 606(a) defines a dependent child as "... a needy child (1) who has been deprived of parental support or care by reason of the death, continued absence from the home, or physical or mental incapacity of a parent, and who is living with his father, mother, grandfather, grandmother, brother, sister, stepfather, stepmother, stepbrother, stepshister, uncle, aunt, first cousin, nephew or neice in a place of residence maintained by one or more of such relatives as his or her own home.

included children in the SSI program in explicit recognition of the special needs of disabled children that are not met adequately by programs providing assistance to families with dependent children. See West v. Cole, supra, at 99.

To find that respondents' children do not meet the test of need set forth by Congress in 42 U.S.C. § 606(a) would run contrary to the entire thrust of including children within the SSI program, i.e., to provide for their special needs.

III. APPELLANT IS PROHIBITED FROM DETERMINING THAT CHILDREN RECEIVING SSI ARE NOT NEEDY.

Petitioner contends, however, that the State of California, and not the federal government, has the authority to determine need. While states are granted wide latitude in establishing need, their authority is subject to the restrictions contained in the Social Security Act and the implementing regulations.

Burns v. Alcala, supra, at 580. Federal law limits the right of petitioner to find that respondents' children are not needy.

The state's "right" to establish need is the requirement that it create an objective standard to determine eligibility. Federal regulations provide that the state plan must:

> "Specify a statewide standard, expressed in money amounts, to be used in determining (a) the need of applicants and recipients and (b) the amount of the assistance payment." 45 C.F.R. § 233.20(a)(2).

The standard of need refers to an amount and is not a designation of income source. The fact that a child receives income from one particular source, namely SSI, is not a valid basis to make a determination that the child, or the family, is not needy. Under federal law, the State must look to see if the family has income below the standard of need.

42 U.S.C. § 602(a)(24) clearly limits the right of petitioner to utilize the receipt of SSI as the measure of need, by stating that the SSI recipient shall not be regarded as a member of the family for the purpose of determining the amount of AFDC benefits. (See text of Section 602(a)(24), p. 2).

Section 602(a)(24) serves two purposes. First, it guarantees that the amount of AFDC benefits granted will not include a portion for the SSI recipient, thus preventing the receipt of double benefits by the recipient. Second, it prevents the states from taking advantage of the federally funded subsistence benefits for disabled children in order to reduce AFDC costs by counting SSI income as available to meet the needs of other persons in the family. But clearly, under the language of 602(a)(24), an SSI recipient is disqualified from consideration as a member of the AFDC family only "for

purposes of determining the amount of benefits of the family." Nowhere in the statutory scheme is the SSI recipient disqualified from being considered an AFDC family member to establish categorical eligibility for the family.

This situation is to be contrasted with the situation where the dependent child has income other that AFDC or SSI. When a child receives outside income such as Social Security Child's benefits, the caretaker relative has two choices: to include the child in the family unit or to exclude the child from the family unit. If a child is included within the unit, the income received by the child is attributed to the family and the AFDC grant is accordingly diminished. 42 U.S.C. § 602(a)(7). If the child is excluded from the family unit, the child is completely ignored for purposes of AFDC. If the excluded child were the only minor within the household, there would be no AFDC

eligibility as there would be no needy dependent child in the family unit.

Section 602(a)(24) only makes sense if interpreted to provide that in the case of SSI, the SSI recipient child is in the family unit, but his/her income is to be ignored in determining need or calculating benefits. By creating this special exemption, it allows the unit to have a dependent child who is needy, but whose needs will be paid through the SSI program, not the AFDC program. This interpretation is buttressed by implementing regulations which require:

> "A State Plan for . . . AFDC . . . must, as specified below:
> (ii) Provide that individuals receiving SSI benefits under Title XVI, for the period such benefits are received, shall not be included in the AFDC assistance unit for purposes of determining need and the amount of the assistance payment."
> 45 C.F.R. § 233.20(a)(1).

Thus both the federal statute and regulations restrict the right of the petitioner to consider

the receipt of SSI as conclusively establishing lack of "need" for an AFDC family, or member thereof.

Finally, aside from the requirements of 42 U.S.C. § 602(a)(24), respondents and their children are needy. As discussed above, need is to be established on an objective, uniform and monetary basis. California has established a standard of need in dollar amounts known as the Minimum Basic Standard of Adequate Care. Welfare & Institutions Code § 11452. If the income received by the SSI recipient children were to be considered against this minimum standard, the families of such recipients are needy pursuant to California standards. For example, under current California law, the minimum need standard for a two person family in the AFDC program is $408 per month. As of June 1983, the monthly benefit level for a disabled child on SSI was $358. Thus, considering only

the SSI benefit, Georgina Zapata and her son, as a family, would fall below the AFDC minimum standard of care and be "needy." Not only would little David be deprived of the extra money which Congress chose to provide to meet his special needs, but he could not even meet the living standard of a healthy AFDC child, as some of his meager income would be diverted to support his destitute mother.

IV. RESPONDENTS' INTERPRETATION OF THE SOCIAL SECURITY ACT IS SUPPORTED BY CASE AUTHORITY AND HEW DIRECTIVES.

In McGranahan v. Whalen, No. 76-377 (D.N.H., January 21, 1977) (order granting preliminary injunction), the United States Court for the District of New Hampshire struck down New Hampshire's policy of denying AFDC benefits to families where all the dependent children in the family were recipients of SSI. (A copy of the decision is found at C.T. 303). New

Hampshire's policy was identical to the policy under attack in the instant case. In striking down the New Hampshire policy as violative of the Social Security Act, the court stated:

> "Under Section 602(a)(24), Phillip's [the dependent SSI child] presence in the family must be disregarded only for the purpose of determining the amount of his family's AFDC entitlement. It follows, therefore, that he is to be considered in determining his family's eligibility for AFDC assistance." (C.T. 305)

Petitioner feebly tries to dismiss the impact of this identical ruling by stating that the size, population and geography of New Hampshire are different from those of California. (Pet. for Cert., p. 24) Regardless of geography, the Zapata family falls below the needs standard in California, just as the plaintiff families in McGranahan did not have sufficient income to meet the minimum need standard in New Hampshire. Moreover, the legal issue presented in McGranahan did not differ

from the issue herein, as petitioner suggests. The court clearly held that the SSI recipient children were "needy" under New Hampshire standards, despite New Hampshire's attempt to exclude the families from AFDC eligibility. (C.T. 306)

Following the McGranahan decision, the United States Department of Health, Education and Welfare, the federal agency responsible for the overall administration of the AFDC program, issued an interpretation of 42 U.S.C. Section 602(a)(24), which dealt with the "Determination of the Assistance Payment When One or More of the Family Members are SSI Beneficiaries." HEW Action Transmittal AT-77-45. (C.T. 353). That interpretation states in relevant part:

> "When one or more of the dependent children in a family are SSI beneficiaries, they are determined to be 'needy' for the purposes of making the family eligible for AFDC because SSI is a means tested program. However, the determination of the assistance payment is based on the need of all of the other eligible individuals in the family taking into consideration their income and

> resources. In some cases, the only other eligible individual whose needs are to be met may be the caretaker relative. In such instances, the AFDC payment would be for the caretaker only."

HEW is the federal agency charged with the administration of the AFDC program nationally. Its interpretation of the Social Security Act is to be afforded great weight. Miller v. Youakim, 440 U.S. 125 (1979). California should not be permitted to ignore federal law, which has been clearly interpreted by HEW and accepted by the other states. 3/

3/ Petitioner refers in his brief to a letter from an HEW regional official which stated that AT 77-45 is an optional provision. (Pet. for Cert., p. 27) This ambiguous letter also stated that California's provision was "more restrictive that permissible." (C.T. p. 351) Even were the letter not ambiguous, the opinions of regional HEW employees carry no weight in the face of the clearly expressed official view of HEW and of statutory mandate. See, Dawson v. Myers, 622 F.2d 1304, 1311 (1980).

As petitioner points out, after the HEW Action Transmittal was issued, another federal district court considered this issue and held the same way as the McGranahan court, that families in which all dependent children were SSI recipients are eligible for AFDC. Udell v. Page, No. 78-849-Civ-J-C (Middle D. Fla., Feb. 2, 1979) (order granting preliminary injunction).

V. PETITIONER MAKES NO COLORABLE ARGUMENTS IN SUPPORT OF HER POSITION.

Petitioner does not even make a colorable argument that respondents' families may be excluded from the AFDC program. A substantial portion of petitioner's brief argues that, although federal law establishes eligibility requirements for the AFDC program, the states have the responsibility for establishing

standards of need. (Pet. for Cert., p. 8-17) No one disputes this. Petitioner merely bootstraps onto this her argument that the state may declare a class of children per se non-needy, regardless of whether their families' income is below the state's minimum standards of need. There is no legal basis for this conclusion, and petitioner presents none.

Petitioner is being disingenuous in her arguments and is clearly doing so merely to delay implementation of the inevitable. Her brief is almost identical word-for-word to the arguments which were submitted to and rejected by the Court of Appeal and the California Supreme Court. Petitioner herself admits that a purpose of the SSI program was to provide for the extra needs of disabled children, which were not being met by the AFDC program. (Pet. for Cert., p. 20) Obviously, by denying AFDC to the parents of these unfortunate children, their

extra needs will not be met. It could not, therefore, be more obvious that petitioner's policy is diametrically opposed to Congressional intent. This court should reject this petition for a writ of certiorari without delay, so there will be no question that California must join the other states in providing at least a minimum amount of assistance to these destitute parents of disabled children.

CONCLUSION

For the reasons set forth above, respondents respectfully request that the court deny the petition for certiorari.

DATED: July 12, 1983

Respectfully submitted,

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By Byron J. Gross
BYRON J. GROSS

PROOF OF SERVICE BY MAIL

I, the undersigned, say: I am and was at all times herein mentioned, a citizen of the United States and a resident of the County of Los Angeles, over the age of eighteen (18) years and not a party to the within action or proceeding; that my business address is 1550 West Eighth Street, Los Angeles, California 90017; that on July 13, 1983, I served the within RESPONDENTS' BRIEF IN OPPOSITION in said action or proceeding by depositing true copies thereof, enclosed in a sealed envelope with postage thereon full prepaid, in the United States mail at Los Angeles, Califoria, addressed as follows:

Anne S. Pressman
John H. Sanders
Deputy Attorneys General
3580 Wilshire Boulevard,
Suite 800
Los Angeles, California 90010

I declare under penalty of perjury that the foregoing is true and correct. Executed on July 13, 1983 at Los Angeles, California.

Barbara Hines

BARBARA HINES